

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA,
Plaintiff,

Case No. 6:06-cr-60089-AA
OPINION AND ORDER

v.

JOAQUIN RAMIREZ AVILA
aka OSCAR LOPEZ ROBLES,
Defendant.

AIKEN, Chief Judge:

Defendant moves for a two-level reduction in his guidelines sentencing range under Amendment 782 of the United States Sentencing Guidelines (USSG), which alters the base offense level for certain methamphetamine offenses.¹ The government responds that defendant is not eligible for relief under Amendment 782, because his ultimate sentencing range remains unaffected. See USSG §

¹Amendment 782 became effective on November 1, 2014. However, any relief granted under the amendment may not go into effect until November 1, 2015.

1B1.10(a)(2)(B); United States v. Leniear, 574 F.3d 668, 673-74 (9th Cir. 2009).

In this case, the court applied the two-level reduction for mitigating role under USSG § 2D1.1(a)(5)(i) and found a base offense level of 30; the court ultimately found that his offense level was 25. The government explains that if defendant received a two-level reduction in his base offense level under Amendment 782, he would be ineligible for the reduction under § 2D1.1(a)(5)(i) and his offense level would remain the same. Defendant does not contest the government's analysis, and I agree that it is sound.

Defendant's base offense level would be 30 if he received a two-level reduction under Amendment 782. However, a reduction under § 2D1.1(a)(5)(i) is unavailable unless the base offense level is 32 or higher. Thus, if the court applied Amendment 782, defendant would not receive the § 2D1.1 reduction and his base offense level would remain 25.

Therefore, defendant's Motion to Modify Sentence (doc. 27) is DENIED.

IT IS SO ORDERED.

Dated this 31st day of March, 2015.



Ann Aiken

United States District Court